

ORIGINAL

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10
11 Attorneys for Defendants
12 CITY OF BEAUMONT; FRANK COE;
13 GREG FAGAN

14 UNITED STATES DISTRICT COURT
15 CENTRAL DISTRICT OF CALIFORNIA, WESTERN DIVISION

16 SCOT DAVIS, BRIAN FORD and
17 JEREMY HARRIS,
18 Plaintiffs,
19 vs.
20 CITY OF BEAUMONT,
21 et al.,
22 Defendants.

CASE NO. CV 12-04990 ABC (SHx)
**NOTICE OF MOTION AND
MOTION TO DISMISS
COMPLAINT**

Trial Date: None Set

23 TO ALL PLAINTIFFS HEREIN THROUGH THEIR ATTORNEYS OF RECORD
24 AND THIS HONORABLE COURT:

25 PLEASE TAKE NOTICE that on August 27, 2012, at 10:00 am. in
26 Courtroom 680 located at the United States District Court, 255 East Temple Street,
27 Los Angeles, California, defendants, CITY OF BEAUMONT, FRANK COE and
28 GREG FAGAN, and each of them, shall move the court for the dismissal of certain
portions of the complaint as against certain defendants, as further set forth below.

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1 This Motion is brought pursuant to Fed. Rule of Civ. Proc. 12(b)(6) and is
2 supported by this Notice, the Motion appended below, and the Memorandum of
3 Points and Authorities submitted herewith, the Court's own file, and such other and
4 further evidence and argument as the Court may deem fit to consider.

5 DATED: July 20, 2012

LEWIS BRISBOIS BISGAARD & SMITH LLP

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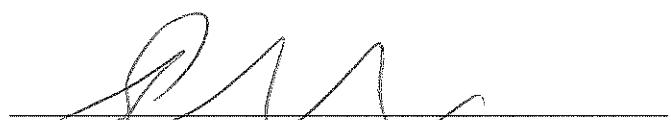
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By:



Arthur K. Cunningham

Attorneys for Defendants, CITY OF
BEAUMONT; FRANK COE; GREG
FAGAN

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MOTION TO DISMISS

2 Defendants move to dismiss any and all of the following claims for relief as
3 to each plaintiff on the ground that they do not state a claim upon which relief may
4 be granted as against the defendant(s), and each of them, pursuant to FRCP
5 12(b)(6):

6 On behalf of defendant, Greg Fagan, as to all plaintiffs:

7 1. Claim # 1, 42 USC Sec. 1983
8 2. Claim # 2, FMLA retaliation
9 3. Claim # 3, State law retaliation
10 4. Claim # 4, [Gov. Code Secs. 3502, 3506]

11 On behalf of defendant, Frank Coe, as to all plaintiffs:

12 1. Claim # 1, 42 USC Sec. 1983
13 2. Claim # 2, FMLA retaliation
14 3. Claim # 3, State law retaliation
15 4. Claim # 4, [Gov. Code Secs. 3502, 3506]

16 On behalf of defendant, City of Beaumont, as to all plaintiffs:

17 1. Claim # 1, 42 USC Sec. 1983
18 2. Claim # 2, FMLA retaliation
19 3. Claim # 3, State law retaliation
20 4. Claim # 4, [Gov. Code Secs. 3502, 3506]

21 | DATED: July 20, 2012

LEWIS BRISBOIS BISGAARD & SMITH LLP

By:

Arthur K. Cunningham
Attorneys for Defendants, CITY OF
BEAUMONT; FRANK COE; GREG
FAGAN

MEMORANDUM OF POINTS AND AUTHORITIES

SUMMARY OF ARGUMENT

3 Defendants demonstrate below that plaintiffs (1) did not engage in protected
4 First Amendment activity; (2) do not allege a claim for retaliation; (3) do not allege
5 proper claims against the individual defendants; (4) do not allege claims of violation
6 of their right to engage in political activity; and (5) do not allege retaliation or
7 discrimination based on a position as an officer in a collective bargaining unit.

8 The complaint does not allege any valid claims against any defendant herein
9 under any theory set forth therein; and defendants demonstrate that amendment would
10 be futile.

11. CLAIMS FOR RELIEF

12 1. “42 USC 1983” [retaliation for speech-related activities]
13 2. FMLA interference/retaliation [\S 29 USC Sec. 2615]
14 3. State-Law Retaliation [Gov. Code Secs. 3302, 3309.5, 3502,
15 3502.1, 3506 retaliation for conducting “political activity”]
16 4. State Law Retaliation [Gov. Code Secs 3502, 3506 - retaliated
17 against as officer of bargaining unit]

18 | P 2. ALLEGATIONS OF COMPLAINT

19 The complaint alleges as follows (where appropriate, either to demonstrate
20 the absence of elements of proof, or for purposes of showing the futility of
21 amendment, defendants offer parenthetical comments, below):

22 The City of Beaumont delegated its policy-making authority to Coe and
23 Fagan and adopted and ratified actions of them as its own policies [¶¶ 3-5].
24 Plaintiffs are police officers entitled to the benefits of the POBR [¶ 6].

“BPOA” is the bargaining unit for police officers with the City of Beaumont [¶ 11].

Davis was hired in October 2007 as a corporal. He was competent and received numerous commendations, etc. [¶ 12]. Ford was hired in March 2008 as a

1 police officer and received “numerous promotions and commendations” [¶ 13].
 2 Harris was hired as a corporal in January 2009, and received commendations, etc. [¶
 3 15].

4 In April 2011, BPOA voted to conduct an evaluation of Coe; Davis and Ford
 5 “spoke out” at the meeting and supported the evaluation [¶ 15]. On April 20, 2011,
 6 BPOA sent a letter to City Manager Kapanicas, criticizing Coe’s performance. No
 7 specifics as to those criticisms are set forth in the Complaint. Some of the statements
 8 in the letter were made by Harris and Davis [¶ 16].

9 On information and belief, Coe was furious about the letter and initiated a
 10 campaign to retaliate and discriminate. He attempted to “compel” the Association to
 11 identify the complainants [who were anonymous in the letter]. On information and
 12 belief, Coe was aware the plaintiffs had taken an active role in the letter [¶ 17].

13 In March 2011 (prior to the letter), vacancies for sergeant positions were
 14 announced. Davis and two other BPOA members applied. Coe then announced he
 15 would open the process to lateral applicants [¶ 18].

16 After BPOA objected, Coe left the positions vacant, and told “Association
 17 members” (i.e., officers in the Department) that the positions were no longer open. It
 18 was later discovered that Coe had “offered” both positions to outside applicants
 19 prior to opening the positions to outside applicants. Coe made several changes to the
 20 application process [¶ 19]. (It is not alleged that any outside applicants were, in fact,
 21 hired.)

22 The actions were “unlawful” and “pretext.” Corporals are now being sent to
 23 leadership training and a policy was instituted to have corporals fill in for sergeants
 24 when no sergeants are available. “This is simply a demotion by another name.” [¶
 25 20] (Note: While the complaint uses the term “demotion,” there is no factual
 26 allegation that anyone was demoted. The complaint also does not allege that anyone
 27 was promoted to the sergeant’s positions instead of plaintiffs, and thus does not
 28 allege any discriminatory or retaliatory conduct. Further, the Complaint does not

1 and cannot allege that these plaintiffs were entitled by experience, education or
 2 performance in the testing process to these positions. Should the matter proceed
 3 beyond the pleading stage, the court will learn that when the sergeants' positions
 4 were eventually filled, one of those promoted was the head of the BPOA.)

5 Immediately after their "Associational speech" the plaintiffs were subjected to
 6 "increasingly harsh discipline". After the letter to the City Manager, Coe "instituted
 7 what he called a zero tolerance policy for discipline" [¶ 21].

8 **A. DAVIS**

9 In January 2011, Davis was assigned to investigate a shooting. Fagan
 10 instructed him to arrest and book a witness for lying; however, Davis believed the
 11 witness. Fagan "became angry and "threatened Davis' employment" and Coe later
 12 defended Fagan's actions [¶ 23]. (This is the only allegation of any alleged conduct
 13 by Fagan in the complaint, and it does not allege any *adverse action* by Fagan
 14 (discipline, demotion, termination, etc.; and there is no allegation in the Complaint
 15 against Fagan by the other two plaintiffs, at all.)

16 In April after the vote Coe called Davis into his office and in a three hour
 17 conversation told Davis he would never be a sergeant at BPD. He told Davis he did
 18 not care about Davis' critique of him, and he could "put it in the newspaper for all
 19 he cared" [¶ 24]. (The complaint does not allege *why* Coe made the alleged
 20 statement; and the allegation "put it in the newspaper" does not support an inference
 21 that Coe was concerned about the letter's contents.)

22 The same day, Comdr. Beard called Davis into his office and covered a
 23 similar subject matter. Beard told Davis that he was a rogue employee and
 24 responsible for the morale issues in the Department. He said Davis would not be
 25 promoted since to do so would reward bad behavior [¶ 25].

26 Davis was subpoenaed to appear at a preliminary hearing on a criminal case
 27 on June 6, 2011 [¶ 26]. He told the subpoena clerk to ask that the DA postpone the
 28 hearing since he intended to be on FMLA leave. The clerk erroneously failed to

1 notify the DA's office until June 16 [¶ 27].

2 On June 17, Sgt. Keyser called Davis and ordered him to go to the hearing in
3 Murrieta although he was on FMLA leave. He went to court but was not called as a
4 witness [¶ 28].

5 Davis was "notified" on July 13 that he was being demoted and suspended for
6 (40) hours for failing to arrive on time to court while on FMLA leave. No other
7 officer had been disciplined for such behavior and others who missed court entirely
8 were given a written reprimand only [¶ 30]. (Although the Complaint alleges that he
9 was "notified" of discipline, the Complaint does not allege that such discipline was,
10 in fact, imposed. No discipline was, in fact, imposed.)

11 On August 25, 2011, Davis had surgery for a shoulder injury [¶ 31]. He
12 returned to work on October 24 on light duty. He was "performing duties normally
13 assigned to civilians" in contravention to Lt. Shuler's memo of September 7, 2010.
14 He was singled out for this treatment. He was required to wear a necktie although it
15 aggravated his injury, without explanation [¶ 32].

16 **B. FORD**

17 Ford conducted a traffic stop on August 15, 2011 (i.e., four months post-
18 meeting/letter). The citizen complained; a sergeant spoke to the complainant. The
19 sergeant "mishandled the investigation" and Ford was disciplined for courtesy to
20 the sergeant [¶ 34]. Ford was given notice of a 30 day suspension and was
21 "subsequently discipline[d]". [¶ 35]. No other officer has been disciplined so harshly
22 for similar offenses [¶ 36]. (Although the Complaint alleges that he was "notified"
23 of discipline, the Complaint does not allege that such harsh discipline was, in fact,
24 imposed. The nature of the discipline is not alleged; nor is the fact that the
25 disciplinary matter was the subject of a settlement between the City and Ford.)

26 ///

27 ///

28 ///

1 C. HARRIS

2 Harris had not been a discipline problem. On July 5, 2011, Harris' wife
 3 dropped him off and illegal window tint was noted (the Complaint indicates that this
 4 was true) [¶ 38]. On July 13, 2011, Harris was "given notice" that he was being
 5 demoted and suspended for 40 hours for "failing to remove the window tint on his
 6 wife's vehicle" [¶ 40]. No other officer has ever been disciplined so harshly for
 7 failing to correct a minor Vehicle Code equipment violation on "their spouse's
 8 vehicle". This was retaliatory. [¶ 40]. (Although the Complaint alleges that he was
 9 "notified" of discipline, the Complaint does not allege that such harsh discipline
 10 was, in fact, imposed. The nature of the discipline actually imposed is not alleged;
 11 nor is the fact that the disciplinary matter was the subject of a settlement between
 12 the City and Harris.)

13 The defendants retaliated against the plaintiffs for failing to promote them to
 14 sergeant and retaliated against them for their activities as "President and Vice-
 15 President of the Baldwin Park (sic) POA" [¶ 42]. (There is no allegation in the
 16 complaint that any plaintiff was an executive officer in the Beaumont Peace Officers
 17 Association.)

18 3. FED. R. CIV. P. 12(b) (6) PROVIDES THE COURT WITH THE
 19 AUTHORITY TO DISMISS CERTAIN CLAIMS AGAINST DEFENDANTS

20 A motion to dismiss tests the sufficiency of the complaint. A complaint may
 21 be dismissed for failure to state a claim based on the lack of a cognizable legal
 22 theory or the absence of facts alleged under such a theory. Balistreri vs Pacifica
 23 Police Dep't, 901 F.2d 696, 699 (9th Cir. 1990). Dismissal is proper where "it
 24 appears beyond doubt that plaintiff can prove no set of facts in support of his claim
 25 which would entitle him to relief." Conley vs Gibson, 355 U.S. 41, 45-46 (1957);
 26 Moore vs City of Costa Mesa, 886 F.2d 260, 262 (9th Cir. 1989).

27 A complaint need not plead detailed factual allegations, but the complaint
 28 must contain enough facts to establish a plausible entitlement to relief that is more

1 than merely speculative. Ashcroft vs Iqbal, 556 U.S. 662, 681 (2009). A pleading
 2 will be rejected if it offers labels, conclusions, or a formulaic recitation of the
 3 elements of a claim for relief. *Id.* Plaintiffs must “nudge” their claims across the line
 4 from conceivable to plausible. Bell Atl. Corp. vs Twombly, 550 U.S. 544, 570
 5 (2007).

6 **4. RETALIATION CLAIM**

7 A retaliation claim requires, at a minimum, a protected First Amendment
 8 exercise by plaintiffs, adverse action against the plaintiffs, and a causal connection
 9 between the two. Eng v Cooley, 552 F.3d 1062, 1070.

10 The Complaint does not allege a First Amendment claim in any event under
 11 Deroschers v City of San Bernardino, 572 F.3d 703, 711 (9th Cir. 2009). In
 12 Deroschers, City police officers registered complaints about the management
 13 practices of a police lieutenant and described him as a micro-manager and a bully.
 14 The Court held that the alleged First Amendment activities of the plaintiffs were
 15 grievances “amount[ing] to a laundry list of reasons why [plaintiffs] found working
 16 for [their supervisor] to be an unpleasant experience. In short, they thought their
 17 boss was a bully and said so.” (*Id.* At 713-14).

18 As Deroschers points out,

19 “[W]hen working for the government, saying one's boss is a bully does
 20 not necessarily a constitutional case make. “[T]he content of the
 21 communication must be of broader societal concern. [Our] focus must
 22 be upon whether the public or community is likely to be truly interested
 23 in the particular expression, or whether it is more properly viewed as
 24 essentially a private grievance.” On the facts of this case, we cannot say
 25 that the public would be truly interested that two police sergeants
 26 believed their supervisor was a "micro-manager," "autocratic" and
 27 "controlling," or even that he dressed them down in front of their
 28 colleagues and neighboring police forces. Such speech, "if released to

1 the public, would convey no information at all other than the fact that
 2 [two] employee[s were] upset with the status quo," [], and is of no
 3 relevance "beyond the employee[s'] bureaucratic niche," []. On
 4 numerous occasions, our sister circuits have suggested that complaints
 5 of this nature would not trigger constitutional protection. See Taylor v.
 6 Carmouche, 214 F.3d 788, 789, 792 (7th Cir. 2000) (explaining that
 7 speech "concern[ing] supervisory management styles" would be
 8 unprotected); Kennedy v. Tangipahoa Parish Library Bd. of Control,
 9 224 F.3d 359, 374 (5th Cir. 2000) (noting that "criticiz[ing] the
 10 management style or job performance of [a] direct superior" would cut
 11 against a public concern finding), *abrogated on other grounds by* Bell
 12 Atl. Corp. v. Twombly, 550 U.S. 544, 127 S. Ct. 1955, 167 L. Ed. 2d
 13 929 (2007); Gardetto v. Mason, 100 F.3d 803, 814 (10th Cir. 1996)
 14 ("Management practices or decisions allocating management
 15 responsibility to particular individuals also do not involve matters of
 16 public concern."); see also Brooks v. Univ. of Wis. Bd. of Regents, 406
 17 F.3d 476, 480 (7th Cir. 2005) (describing "infighting" and decisions
 18 which "undermine" an individual's "control of a department" as "a
 19 classic personnel struggle"). Indeed, to hold otherwise here would be
 20 to create the potential for litigation in every workplace gripe exchanged
 21 around the water cooler." (*Id.* at 713-714, footnotes and citations
 22 omitted).

23 Just so here. The Complaint does not allege First Amendment activity beyond
 24 registering complaints about the workplace, and as Deroschers noted, turning every
 25 internal complaint in public employment into a constitutional issue is unnecessary
 26 and unwise.

27 Further, even were the plaintiffs to have engaged in protected activity, no
 28 *prima facie* case of retaliation has been made.

1 ***Lack of Temporal Nexus.*** For example, in *Erickson v Pierce County*, 960
 2 F.2d 801, 803 (9th Cir. 1992) the 9th Circuit affirmed the trial court's judgment
 3 notwithstanding the verdict in plaintiff's favor; finding no retaliation where there
 4 was a three month gap between the alleged first amendment exercise and an adverse
 5 action. Here the allegedly retaliatory "notification" of discipline occurred several
 6 months after the April letter.

7 ***Lack of Adverse Action.*** No adverse action by Commander Fagan is alleged
 8 at all (he is alleged to have become angry at Davis, only, and in January 2011 (the
 9 letter was in April 2011). As to Chief Coe, there are allegations of "notice" of harsh
 10 discipline, but no allegations that such discipline was, indeed, imposed or that the
 11 discipline *actually* imposed, if any, was out of line with similar violations of
 12 departmental policy.

13 ***Lack of Retaliatory Animus.*** There is no allegation that Commander Fagan
 14 knew of the letter or developed a retaliatory mindset because of it. The allegation
 15 "on information and belief" that Coe was angry about the letter is directly
 16 contradicted by the allegations of the complaint itself, wherein it is alleged directly
 17 that Chief Coe told Davis that he did not care about Davis' critique of him, and
 18 Davis could "put it in the newspaper for all he cared" [¶ 24].

19 The failure to promote component of the claim dies because no allegation is
 20 made that the three plaintiffs were qualified for the position of sergeant by
 21 experience, education or test scores.

22 **5. Claim No. 2 - Davis' FMLA Claim**

23 This claim is made solely by plaintiff Davis.

24 The individual defendants are not liable as a matter of law. Only the employer
 25 is liable for claims arising under FMLA ("It shall be unlawful for *any employer* to
 26 interfere with, restrain, or deny the exercise of or the attempt to exercise, any right
 27 provided under this title" (29 USC Sec. 2615, emphasis added)).

28 // /

1 There is a split of authority as to whether public employees qualify as
 2 "employer[s]" and hence may be held individually liable under the FMLA. The Fifth
 3 and Eighth Circuits have held that public employees may be sued in their individual
 4 capacities under the FMLA if, for example, they exercise hiring and firing authority.
 5 See Modica v. Taylor, 465 F.3d 174, 184-87 (5th Cir. 2006); Darby v. Bratch, 287
 6 F.3d 673, 681 (8th Cir. 2002). The Sixth and the Eleventh Circuits have reached the
 7 opposite conclusion. See Mitchell v. Chapman, 343 F.3d 811, 825-33 (6th Cir.
 8 2003); Wascura v. Carver, 169 F.3d 683, 685-87 (11th Cir. 1999).

9 Even those few Circuits who have held that individuals can be liable limit
 10 liability to those who have the authority to hire and fire. As the plaintiffs are police
 11 officers with civil service protections und the Peace Officers Bill of Rights,
 12 individual employees do not have the authority, in themselves, to hire or fire, and
 13 Cmdr. Fagan, who is by definition not the Chief of the Department, clearly does not
 14 have such authority.

15 Since the City is a proper defendant as to FMLA claims, adding the
 16 individuals is not necessary to ensure that a plaintiff can, in a meritorious FMLA
 17 case, obtain damages. Defendants submit that under the circumstances, the FMLA
 18 claims against the individuals should be dismissed.

19 Further, plaintiff Davis makes no claim that he suffered injury or damage as a
 20 result of having to appear in response to a subpoena (which was issued by a separate
 21 agency, the District Attorney, see ¶s 26-27). He does not allege that he was *actually*
 22 *disciplined* for failing to respond to the subpoena.

23 On these grounds, the claim of Davis under FMLA is untenable and must be
 24 dismissed.

25 **6. Claim No. 3 - State Law Retaliation Claim**

26 Plaintiff's claim is explicitly based on Gov. Code Sec. 3302, which provides
 27 that peace officers may not be coerced into engaging in, or prohibited from engaging
 28 in, political activity [Complaint, ¶ 54]. Nothing in the Complaint refers to any

1 political activity by a plaintiff herein (cf. Heuer v. City of San Francisco, 2011 U.S.
 2 Dist. LEXIS 131204 (N.D. Cal. 2011), wherein Plaintiff alleged (ultimately
 3 unsuccessfully) that the Sheriff did not promote him to Lieutenant "because of
 4 [plaintiff's] political activities in *openly and actively supporting Defendant*
 5 *Hennessey's competitor in the race for San Francisco Sheriff.*" No such political
 6 activity is alleged in this Complaint.)

7 As noted above, no actionable adverse action is alleged by any plaintiff upon
 8 which a claim under this section could be based.

9 Further, since the claim is brought under the Peace Officers' Bill of Rights,
 10 the only proper defendant would be the public employer, not individual co-
 11 employees such as Cdr. Fagan or the Chief (see, e.g., Gov. Code Secs. 3502
 12 (describing employee-employer relations); 3502.1 (which refers to actions only an
 13 employer can take); 3506 (restraining the actions of "[¶] public agencies and
 14 employee organizations").

15 Even if the claims arising under Sec. 3302 were facially valid, the only proper
 16 defendant would be the City and the individual defendants must be dismissed.

17 **7. Claim No. 4 - Claim under Meyers-Milias-Brown Act**

18 A claim under Gov. Code Sec. 3502.1 arises when a public employee is
 19 subjected to punitive action or denied promotion because of their status as an
 20 "elected, appointed or recognized representative of any employee bargaining unit."
 21 The complaint does not allege that any of the plaintiffs were in such positions with
 22 the City's police officers' bargaining unit.

23 As noted above, no actionable adverse action is alleged by any plaintiff upon
 24 which a claim under this section could be based.

25 Further, since the claim is brought under the Peace Officers' Bill of Rights,
 26 the only proper defendant would be the public employer, not individual co-
 27 employees such as Cdr. Fagan or the Chief (see, e.g., Gov. Code Secs. 3502
 28 (describing employee-employer relations); 3502.1 (which refers to actions only an

1 employer can take); 3506 (restraining the actions of “[¶] public agencies and
2 employee organizations”).

3 **8. Request for Injunctive Relief**

4 As to the requests for injunctive relief, there is no allegation that there are
5 ongoing disciplinary matters to be restrained (as noted, there is no actual allegation
6 that improper discipline has been *imposed* on any plaintiff or that discipline
7 proceedings are pending against any of them) or an open promotions process in
8 which to intervene, and therefore, the case-or-controversy requirement for
9 jurisdiction under 28 USC Sec. 2201 is absent (see, e.g., Gustafson v Poitra (2009,
10 DC ND) 626 F.Supp.2d 1008).

11 **9. Futility of Amendment**

12 Defendants contend that amendment would be futile. Of the disciplinary
13 matters alleged in the complaint, no discipline was imposed as to Davis, and the
14 discipline imposed on Harris and Ford was the subject of a written settlement
15 agreement.

16 As to the claim of discriminatory failure to promote, the then-President of the
17 BPOA was promoted to sergeant as part of the process about which the plaintiffs
18 complain. None of the plaintiffs qualified for promotion.

19 There is no basis for a claim for relief as against the defendants on the part of
20 any plaintiff herein.

21 **CONCLUSION**

22 The plaintiffs' allegations do not set forth a claim for retaliation under the
23 First Amendment or any provision of state law.

24 The plaintiff's allegations do not state a claim of any kind against Cdr. Fagan.

25 The plaintiff's allegations do not state a claim against Chief Coe under state
26 or federal law.

27 ///

28 ///

1 Upon the grounds set forth in this motion, the defendants request that the
2 Complaint be dismissed in its entirety, or, in the alternative, that the individual
3 defendants be dismissed from the various plaintiffs' claims.

4 DATED: July 20, 2012

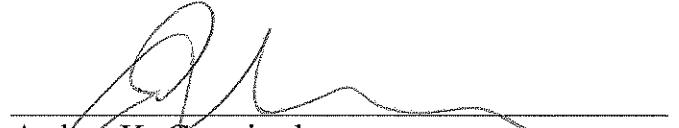
LEWIS BRISBOIS BISGAARD & SMITH LLP

5

6

7

By:



Arthur K. Cunningham

Attorneys for Defendants, CITY OF
BEAUMONT; FRANK COE; GREG
FAGAN

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FEDERAL COURT PROOF OF SERVICE

2 Davis, et al. v City of Beaumont, et al. - File No. 25401.tba

3 STATE OF CALIFORNIA, COUNTY OF SAN BERNARDINO

4 At the time of service, I was over 18 years of age and not a party to the action.
5 My business address is 650 East Hospitality Lane, Suite 600, San Bernardino, CA
6 92408. I am employed in the office of a member of the bar of this Court at whose
7 direction the service was made.

8 On July 20, 2012, I served the following document(s): NOTICE OF
9 MOTION AND MOTION TO DISMISS COMPLAINT

10 I served the documents on the following persons at the following addresses
11 (including fax numbers and e-mail addresses, if applicable):

12 Michael A. McGill, Esquire
13 Christopher A. Gaspard
14 LACKIE DAMMIER & McGILL
15 APC
16 367 North Second Avenue
17 Upland, California 91786
18 (909) 985-4003
19 (909) 985-3299 (fax)
20 Michael A. McGill
21 mcgill@policeattorney.com
22 chris@policeattornev.com

23 The documents were served by the following means:

24 (BY U.S. MAIL) I enclosed the documents in a sealed envelope or package
25 addressed to the persons at the addresses listed above and I deposited the
26 sealed envelope or package with the U.S. Postal Service, with the postage
27 fully prepaid.

28 (BY COURT'S CM/ECF SYSTEM) Pursuant to Local Rule, I electronically
29 filed the documents with the Clerk of the Court using the CM/ECF system,
30 which sent notification of that filing to the persons listed above.

31 I declare under penalty of perjury under the laws of the State of
32 CALIFORNIA that the foregoing is true and correct.

33 Executed on July 20, 2012, at San Bernardino, California.

34 SHARON DENISE MOORE